Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	**CC Docket No. 96-61**
	)	
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

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Founded in 1977, the Cato Institute is a public policy research foundation dedicated to broadening the parameters of policy debate to allow consideration of options that are consistent with the traditional American principles of limited government, individual liberty, and peace. The Institute is a nonprofit educational foundation.

Part I of these comments concerns the Commission's proposal to adopt mandatory detariffing for nondominant interexchange carriers. Part II addresses the proposal to abandon the prohibition on nondominant interexchange carriers' bundling equipment and service offerings.

Mandatory detariffing would further the public interest and is not necessary to ensure that rates be "just and reasonable," because tariffs offer carriers an opportunity for collusive pricing. In order to move telecommunications markets closer to the day when all telecommunications companies are equal in the eyes of the law, the Commission's detariffing proposal should treat AT&T no differently from other interexchange carriers.

The prohibition on bundling should be abandoned. It prevents customers from relying on the expertise of their telecommunications carrier in packaging new services. Market forces will be sufficient to ensure that service continues to be available on an unbundled basis.

I. Mandatory Detariffing Proposal

A. Compliance with Section 401: In my view, the tariffing process hinders, rather than furthers, the goal of seeing that interexchange rates be "just and reasonable." There are two primary reasons for this. First, the required filings increase interexchange company's costs, albeit perhaps incrementally. Second, as the Commission has recognized, the tariff filings offer interexchange carriers the opportunity to engage in price collusion. Detariffing would thus definitely satisfy section 401 of the 1996 Telecommunications Act, which in part requires the Commission to forbear from enforcing a regulation when that regulation is not necessary to ensure just and reasonable rates.

Additionally, as the Commission has tentatively concluded, the tariffing process is not necessary to protect consumers. Consumers who believe they have been badly treated by one interexchange carrier are free to switch to another carrier. Indeed, a consumer is far more likely to initiate such a change than to refer to a carrier's tariff filings with the FCC, or to pursue a complaint about a carrier with the FCC. In the new telecommunications environment, where vast numbers of consumers will choose among a great variety of services and terms of service, it will prove increasingly inappropriate and ultimately impossible for "consumer protection" to be overseen by a Soviet-style central board. Increased competition and consumer choice must serve instead, and will serve better, as a form of decentralized control.

Finally, forbearance from tariffing would be consistent with the public interest, especially in-so-far as "public interest" means the interest of consumers. This is primarily because tariffing may facilitate collusion, as discussed above.

B. Reclassification of AT&T: The Commission asks how the recent reclassification of AT&T as a nondominant carrier affects the above analysis. Some might suggest that AT&T is still "just too big" to be detariffed, and that, therefore, whatever the Commission decides with respect to other nondominant carriers, AT&T should not be detariffed. This view is sadly mistaken, for two reasons.

First, if tariffing is facilitating price collusion among interexchange carriers, continued tariffing by any important player in the market *will hardly end collusive pricing*. If AT&T remains under tariffing requirements while other companies are freed, few of the benefits of detariffing will be realized.

Second, the Commission's finding that AT&T is now nondominant implies recognition of the simple fact that competition has arrived in interexchange markets. Under these circumstances, there certainly is no need for tariffing. There is no need to continue to treat AT&T as a "special case," an approach which invites continuous lobbying before the Commission by every competitor and would-be competitor. The Commission can now move forward to a day when all telecommunications companies are equal in the eyes of the law.

C. Permissive vs. Mandatory Detariffing: Mere permissive, as opposed to mandatory, detariffing, would not be sufficient to eliminate the regulatory apparatus that carriers can use to facilitate price collusion.

At first glance, it might seem more deregulatory to simply let carriers decide for themselves whether to file or not. But this view of the matter is confused. *The very act of maintaining tariff files at the FCC is a positive regulatory act. Only the abolition of these files represents true deregulation.* Mandatory detariffing, therefore, is the better approach.

II. Abandonment of Prohibition on Bundling

A. Prohibition on Bundling: Thus far, nondominant interexchange carriers have been prohibited from offering service bundled with customer premises equipment. In essence, this rule amounts to a restriction on what consumers may buy. Consumers are prevented from relying on the expertise of their telecommunications carrier in assembling a package of equipment and service. The carrier may only offer the service or the equipment separately; the consumer must tangle with the difficult question of how to best match the service it has chosen with the equipment it needs. Often, the consumer may choose to stick with its tried and true old service rather than develop expertise in matching new equipment to a new service. The prohibition on bundling may therefore be a substantial hindrance to the adoption of new services. Consumers would be better off without such

restrictions.

B. Unbundling Requirements: Do consumers need a rule that interexchange carriers *must* offer service on an unbundled basis, if they also offer bundles? Most consumers already own assorted customer premises equipment. There will be, therefore, overwhelming demand for interexchange service unbundled from equipment. A few niche carriers might decide to offer service only if it is bundled with equipment; indeed, it may be economically infeasible to offer some new or experimental services on an unbundled basis. But it is extraordinarily unlikely that interexchange carriers as a general matter will refuse to offer service unbundled from equipment.

Imposing an "unbundled too" requirement would therefore be unnecessary to ensure that consumers can purchase unbundled service. It might also preclude some businesses or services from getting off the ground altogether.